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Novak Druce + Quigg LLP CityPlace Tower, 525 Okeechobee Blvd. Fifteenth-Floor WEST PALM BEACH, FL 33401			EXAMINER NGUYEN, TAN D	
			ART UNIT 3689	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/085,145	Applicant(s) MEISER ET AL.	
	Examiner Tan Dean D. Nguyen	Art Unit 3689	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,7,8,10,24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,7,8,10,24 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

The amendment filed 5/4/09 has been entered.

Claim Status

1. Claims 1-5, 7-8, 10, 24, and 25 are pending. They comprise 3 set of claims of similar scope:

1) method: claims 1-5, 7-8, 10;

2) system: 24, and

3) computer-readable storage: 25.

Claims 6, 9, 11-23 have been canceled.

As of 11/12/08, claim 1 is as followed:

1. (Currently Amended) A method of dynamically modifying an electronic campaign comprising:

a) identifying available network capacity of a combined packet-switched and circuit- switched network comprising a plurality of distinct delivery channels, including at least one private network channel for communicating with a private network device, at least one telephonic channel for communicating with telephonic device, and at least one public network channel for communicating with a public Web site,

b) transmitting electronic content for the electronic campaign to consumers over the plurality of delivery channels of the network according to a predetermined outbound transmission flow rate for said electronic campaign;

c) receiving consumer responses associated with each of the plurality of delivery channels used to transmit the electronic content;

d) analyzing the received consumer responses and determining an effectiveness of the electronic campaign over each of said plurality of delivery channels;

e) selectively redirecting at least a portion of the electronic content from delivery channels determined to be less effective to the a delivery channel determined to be more effective; and

f) dynamically modifying said outbound transmission flow rate for said electronic campaign according to said determined effectiveness of the electronic campaign and said identified available network capacity.

Note: for convenience, letters (a)-(f) are added to the beginning of each step.

I. Finding of Facts

1) Channel:

Date: 14th century

1 a : the bed where a natural stream of water runs

b : the deeper part of a river, harbor, or strait

c : a strait or narrow sea between two close landmasses

d : a means of communication or expression: as

(1) : a path along which information (as data or music) in the form of an electrical signal passes

(2) *plural* : a fixed or official course of communication <went through established military *channels* with his grievances>

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e : a way, course, or direction of thought or action <new *channels* of exploration>

f : a band of frequencies of sufficient width for a single radio or television communication.

II. Principles of Laws

2. Note: it appears that claim 24 is an apparatus claim.

In examination of the apparatus claim, the claims must be structurally distinguishable from the prior art. While features of an apparatus claim may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. See (1) MPEP 2114. (2) *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997).

Apparatus claims cover what a device is, not what a device does, i.e. "device which acts or performs ...". (3) *Hewlett-Packard Co. vs. Bausch & Lomb Inc.* (Fed. Circ. 1990).

Manner of operating the device or elements of the device, i.e. recitation with respect to the manner in which a claimed apparatus is intended to be employed/used, does not differentiate apparatus from the prior art apparatus. (4) *Ex parte Masham*, 2 USPQ2d 1647 (BPAI, 1987).

Also, this is an apparatus claim and intended use limitation for the system/device or apparatus, i.e. "for dynamically modifying an electronic campaign according to real time network conditions" carries no patentable weight.

3. The recitation of "according to real time network conditions" in the preamble is noted. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body

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of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See (1) *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and (2) *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Claim Rejections - 35 USC § 112

4. Claims 1-5, 7-8, 10, 24, and 25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

1) Independent claims 1, 24 and 25 include the new limitations of “according to real time network conditions” in the preamble. There is no citation of this limitation in the body of the claims and which steps are effected by this new limitation.

2) In independent claim 24, claim elements “means for” “identifying, transmitting, receiving, analyzing, selectively redirecting, and dynamically modifying ...” is a means (or step) plus function limitation that invokes 35 U.S.C. 112, sixth paragraph. However, the written description fails to disclose the corresponding structure, material, or acts for the claimed function. Figure 1 and pages 8-14 have been reviewed but there are no clear disclosure of the corresponding structure, material, or acts for the claimed function.

Applicant is required to:

(a) Amend the claim so that the claim limitation will no longer be a means (or step) plus function limitation under 35 U.S.C. 112, sixth paragraph; or

(b) Amend the written description of the specification such that it expressly recites what structure, material, or acts perform the claimed function without introducing any new matter (35 U.S.C. 132(a)).

If applicant is of the opinion that the written description of the specification already implicitly or inherently discloses the corresponding structure, material, or acts so that one of ordinary skill in the art would recognize what structure, material, or acts perform the claimed function, applicant is required to clarify the record by either:

(a) Amending the written description of the specification such that it expressly recites the corresponding structure, material, or acts for performing the claimed function and clearly links or associates the structure, material, or acts to the claimed function, without introducing any new matter (35 U.S.C. 132(a)); or

(b) Stating on the record what the corresponding structure, material, or acts, which are implicitly or inherently set forth in the written description of the specification, perform the claimed function. For more information, see 37 CFR 1.75(d) and MPEP §§ 608.01(o) and 2181.

5. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention for the reason set forth above.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claims 1-5, 7-8, 10 (method), 24 (system¹), and 25 (product) are rejected under 35 U.S.C. 103(a) as being unpatentable over (1) D'EON ET AL, (2) RAKOSHITZ et al (3) applicant admitted prior art (AAPA) and (4) SCHLACK.

As for claim independent method claim 1, D'EON et al discloses a method of assessing effectiveness of an **Internet** marketing (advertising) campaign (including eliciting a response) comprising the steps of:

(a) identifying the available network capacity for transmitting electronic content for an electronic campaign_and receiving consumer responses to said transmitted electronic content;

{see Fig. 1, 10, see col. 2, lines 6-20 "... *single proxy server.... thousands of individual user computers...*"}

(b) transmitting the electronic content over at least one delivery channel (**paths**) of the network

{see col. 1, "*web page banner advertisement*" } according to a predetermined campaign;

(c.) concurrently determining the effectiveness of the campaign by identifying consumer responses to the transmitted electronic content (information) to the **various selected paths** (websites).

{see col. 2, lines 29-32, col. 3, lines 10-16, col. 7, lines 10-14 "*indication ... effectiveness of the advertisement* ", Fig. 2, Fig. 6}; and

(f) dynamically modifying the campaign parameters for said electronic campaign according to said determined effectiveness of the electronic according to said

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determined effectiveness of the electronic campaign and said identified available network capacity.

{see col. 1, lines 50-55, and Fig. 6}).

Note that on col. 1, lines 25-31, D'EON et al teaches that Internet advertising expands space and more resources are spent on advertising and it's desirable to assess the effectiveness of Internet advertising, to more efficiently allocate the advertising resources. On col. 1, lines 50-55, D'EON et al teaches the step of *"ascertaining which banners are and are not effective in causing a user to make a transactional decision"*, it would have been obvious to improve (modify) the campaign effectiveness by deleting the not effective banners and use only the effective banner in order to be profitable, i.e. increasing AD #1 while decreasing or deleting AD #2, as shown in Fig. 6. As for the limitation of "according to a predetermined outbound transmission flow rate for said electronic campaign" in step (b), this is inherently included in Fig. 6, see Output, element 58, "AD #: 1, 2, 3", "# IMPRESSIONS: 3, 3, 1".

The teachings of D'EON et al fairly teaches the claimed invention except for: (1) explicitly disclosing that the campaign parameter in step (d) is an "outbound transmission flow rate", which is one of the many e-marketing campaign parameters, (2) new amended steps (d)-(e) above.

RAKOSHITZ et al is cited to teach management or monitoring traffic flow on the Internet by monitoring, modifying or controlling the inbound and outbound information flow rate based upon applications and comprising a **plurality of distinct delivery channels**, including at least one private network channel for communicating with a

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private network device, at least one telephonic channel for communicating with telephonic device, and at least one **public network** channel for communicating with a public Web site, source address, destination address, URL, time of day, day of week, day of month, other variations using traffic management tool 208 of Figs. 1 {see col. 10, lines 12-35}, especially Figs. 15,16, 9-13, and cols. 16, 21-22 and 24. Traffic management tool 208 also controls activities ranging from **managing bandwidth/latency control to capacity planning** {see lines 20-22, Figs. 13, 15}.

It would have been obvious to modify the teachings of monitoring traffic flow of D'EON et al by using a **plurality of distinct delivery channels**, including at least one private network channel for communicating with a **private** network device, at least one telephonic channel for communicating with telephonic device, and at least one **public network** channel for communicating with a public Web site, source address, destination address, URL, time of day, day of week, day of month, other variations using traffic management tool and modifying or controlling one parameter of traffic flow which is the outbound information flow rate based upon a specific application (i.e. marketing campaign) as taught by RAKOSHITZ et al as for the purpose of **managing bandwidth/latency control to capacity planning** {see lines 20-22, Figs. 13, 15}.

AAPA, as shown on pages 1-2, discloses in monitoring e-marketing campaign, one has to monitor the campaign parameters such as normal day-to-day traffic flow such as the rate (amount of traffic /hr) of sending of promotional content (outbound transmission flow rate) as well as the receipt of customer inquiries (inbound) responsive to the e-marketing campaign to avoid exceeding the available bandwidth of the network

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over which the campaign is conducted. It would have been obvious to one of ordinary skill to modify the teachings of D'EON et al/RAKOSHITZ et al by changing the e-marketing campaign monitoring parameter using outbound transmission flow rate as taught by AAPA as mere using other well known e-marketing campaign parameter to more efficiently allocate Internet resources. For example, in view of the teachings of Fig. 6 of D'EON et al, it would have been obvious to reduce the outbound transmission flow rate of ads or promotional content to AD #2 or increase the outbound transmission flow rate of ads or promotional content to AD #1 as taught by AAPA.

The teachings of D'EON et al/AAPA or RAKOSHITZ et al fails to teach the redirecting a portion of the electronic content to a more effective channel and modifying the campaign to make it more effective.

In a system and method for monitoring consumer's activities and directing/redirecting at least a portion of electronic content (market segments/ads) to the most appropriate delivery channel, **SCHLACK** fairly teaches the concept of monitoring the consumer's activities (or request or responses) associated with each of the plurality of delivery channels used to transmit the electronic content and based upon the received consumer responses analyzed, determining which of the plurality of delivery channels is more effective than each of the other of said plurality of delivery channels and selectively redirecting at least a portion of the electronic content from other of said plurality of delivery channels to the delivery channel determined to be more effective or best suitable or appropriate to the consumer {see col. 6, lines 41-67, col. 7, lines 1-35,

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col. 8, lines 10-52, col. 11, lines 20-57, col. 10, lines 49-59, col. 12, lines 10-67, Figs. 1, 2, 7, 8 and 9}.

It would have been obvious to modify the teachings of D'EON et al / RAKOSHITZ et al / AAPA by including steps (d) and (e) as taught by SCHLACK to present the most suitable electronic content to the consumer, thus being more effective. Note, that the essential issue is present the most suitable electronic content to the consumer and how this is carried out, by selecting the appropriate channel among the many channels or by selecting the appropriate content among the many contents is within the knowledge of the skill artisan. Alternatively, in view of the teaching of "selecting the appropriate e-content to present to the customer", it would have been obvious to select the appropriate delivery channel to present the appropriate e-content to the consumer to be effective.

As for dep. claim 2 (part of 1 above), which deals with the type of electronic content or information, i.e. marketing campaign such as advertising, this is non-essential to the scope of the claimed invention and is taught in D'EON et al Fig. 1 or SCHLACK col. 2, lines 60-67, col. 9, lines 5-50.

As for dep. claims 3-4 (part of 1 above), which deals with determining available network capacity parameters, i.e. bandwidth, these are taught in D'EON et al / RAKOSHITZ et al / AAPA as cited on pages 1-2 of AAPA or D'EON et al / RAKOSHITZ et al as shown on RAKOSHITZ et al col. 10, lines 20-60, col. 11, lines 1-45.

As for dep. claims 5, 10 (part of 1 above), which deal with marketing campaign parameters, i.e. determining a number of received consumer responses, this is taught in D'EON et al Figs. 3-6.

As for dep. claims 7-8 (part of 1 above), which deal with electronic content transmitting parameters and controlling the flow rate parameters, i.e. decreasing or increasing the flow rate, etc., these are fairly taught in D'EON et al as mentioned in the rejections of claim 1 above and/or by RAKOSHITZ et al col. 10, lines 20-35.

As for independent system claim 24, which the respective system to carry out the method of claim 1 above, it's rejected over the system of D'EON et al / RAKOSHITZ et al /AAPA / SCHLACK as indicated in D'EON et al Fig. 1, 2, and further in view of RAKOSHITZ et al Figs. 1-2.

As for independent program product claim 25, which the respective computer program product to carry out the independent method of claim 1 above, it's rejected over the computer program product of D'EON et al / RAKOSHITZ et al / AAPA/ SCHLACK as indicated in D'EON et al col. 3, lines 17-35 and further in view of AAPA or RAKOSHITZ et al.

10. Claims 1-5, 7-8, 10 (method), 24 (system¹), 25 (product) are rejected (2nd time) under 35 U.S.C. 103(a) as being unpatentable over (1) ELDERING '442 in view of (2) ORACLE iMARKETING, (4) RAKOSHITZ et al and (5) SCHLACK.

As for independent method claim 1, ELDERING '442 fairly discloses a method of managing targeted advertising campaign over a plurality of networks comprising the steps of:

a) identifying available network capacity of a combined packet-switched and circuit-switched network comprising a plurality of distinct delivery channels, including at least one private network channel for communicating with a private network device, at least one telephonic channel for communicating with telephonic device, and at least one public network channel for communicating with a public Web site,

{see Figs. 1B, 4, pars. [0003]-[0005], [0012-0013], [0062]}

b) transmitting electronic content for the electronic campaign to consumers over the plurality of delivery channels of the network according to a predetermined outbound transmission flow rate for said electronic campaign;

{see Figs. 1B, 4, pars [0003]-[0005], [0012-0013], [0062]}

ELDERING '442 fairly teaches the claimed invention except for: (1) explicitly disclosing that the campaign parameter in step (d) is an “outbound transmission flow rate”, which is one of the many e-marketing campaign parameters, and steps (c)-(f).

ORACLE iMARKETING discloses a method of eliciting response in an electronic (Internet) marketing campaign (advertising) comprising the steps of:

(b) transmitting the electronic content {see page 2, “*web page banner advertisement*”} over the network according to a predetermined campaign;

(c.) concurrently determining the effectiveness of the campaign by identifying consumer responses to the transmitted electronic content (information) {see page 2, 3rd paragraph "*ROI measurement and ... effectiveness is critical*"; and

(d) dynamically modifying the campaign according to (1) the determined effectiveness of the campaign (or (c.) page 2, 3rd paragraph, page 3, 3rd paragraph, page 4, 3rd paragraph, page 5, last two paragraphs.

Therefore, it would have been obvious to modify the teachings of ELDERING '442 by carrying out steps (b), (c) and (d) as taught by ORACLE iMARKETING to assess the effectiveness of the various advertising channels and effectively managing/modifying the campaign.

The teachings of ELDERING '442 /ORACLE iMARKETING fairly teaches the claimed invention except for steps (d), (e) and (f) using multiple distinct delivery channels and with modifying the outbound transmission flow rate for the electronic campaign

RAKOSHITZ et al is cited to teach management or monitoring traffic flow on the Internet by monitoring, modifying or controlling the inbound and outbound information flow rate based upon applications and comprising a **plurality of distinct delivery channels**, including at least one private network channel for communicating with a **private** network device, at least one telephonic channel for communicating with telephonic device, and at least one **public network** channel for communicating with a public Web site, source address, destination address, URL, time of day, day of week, day of month, other variations using traffic management tool 208 of Figs. 1 {see col. 10,

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lines 12-35}, especially Figs. 15,16, 9-13, and cols. 16, 21-22 and 24. Traffic management tool 208 also controls activities ranging from **managing bandwidth/latency control to capacity planning** {see lines 20-22, Figs. 13, 15}.

RAKOSHITZ et al also teaches a method and apparatus for conducting a specific application comprising the steps of:

(a) identifying the available network capacity for carrying out the specific application,

(d) determining real-time analysis of results to enable quick relocation of resources to successful campaigns such as controlling and deploying modifying/changing the outbound transmission flow rate for the specific application to match network growth or changing needs in a growing office {see Figs. 1-2, col. 10, lines 12-36}.

It would have been obvious to modify the teachings of monitoring traffic flow of ELDERING '442 /ORACLE iMARKETING by using a **plurality of distinct delivery channels**, including at least one private network channel for communicating with a **private** network device, at least one telephonic channel for communicating with telephonic device, and at least one **public network** channel for communicating with a public Web site, source address, destination address, URL, time of day, day of week, day of month, other variations using traffic management tool and modifying or controlling one parameter of traffic flow which is the outbound information flow rate based upon a specific application (i.e. marketing campaign) as taught by RAKOSHITZ

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et al as for the purpose of **managing bandwidth/latency control to capacity planning** {see lines 20-22, Figs. 13, 15}.

It would have been obvious to modify the teachings of ELDERING '442 /ORACLE iMarketing by carrying out steps (a) and (d) as taught by RAKOSHITZ et al to provide optimal recommendations of network configurations application to match network growth or changing needs in a growing office {see Figs. 1-2, col. 10, lines 12-36}.

The teachings of SCHLACK is cited above. It would have been obvious to modify the teachings of ELDERING '442/ORACLE iMARKETING /RAKOSHITZ et al by including steps (d) and (e) as taught by SCHLACK to present the most suitable electronic content to the consumer, thus being more effective. Note, that the essential issue is present the most suitable electronic content to the consumer and how this is carried out, by selecting the appropriate channel among the many channels or by selecting the appropriate content among the many contents is within the knowledge of the skill artisan. Alternatively, in view of the teaching of “selecting the appropriate e-content to present to the customer”, it would have been obvious to select the appropriate delivery channel to present the appropriate e-content to the consumer to be effective.

As for dep. claims 2-5, 7-8 and 10 (part of 1 above), they are rejected for the same reasons set forth above in view of the teachings by RAKOSHITZ et al.

As for independent system claim 24, which the respective system to carry out the method of claim 1 above, it's rejected over the system of ELDERING '442 /ORACLE iMARKETING /RAKOSHITZ et al/SCHLACK.

As for independent program product claim 25, which the respective computer program product to carry out the independent method of claim 1 above, it's rejected over the computer program product of ELDERING '442 /ORACLE iMARKETING /RAKOSHITZ et al/SCHLACK.

Response to Arguments

11. Applicant's arguments, see response, filed 5/4/09, with respect to the rejection(s) of the outstanding claim(s) under ELDERING '263 /D'EON ET AL /JOHNSON ET AL /AAPA /RAKOSHITZ and SCHLACK or ELDERING '442 /ORACLE iMARKETING /JOHNSON ET AL /RAKOSHITZ /SCHLACK have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as indicated above.

No claims are allowed.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1) US 2002/0123957, by **Notarius et al**, discloses a system and method for marketing and communicating in the business industry including **various communication channels such as on-line & email & real time analysis**. See pars. [0597-0621, 0769]. This could have been used in the rejection for marketing communication using private (e-mails) and public network (website) if needed to avoid multiple rejections.

1) US 2002/0049816 discloses the monitoring, accessing and receiving of consumer data from various sources in a marketing campaign, see Figs. 1a, 1b and would have been obvious to apply this concept in the current rejection if needed.

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14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct@uspto.gov>. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (571) 272-3600, or e-mail CustomerService3600@uspto.gov.

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 6:30 am - 4:00 pm. I am scheduled to be off every other Friday.

Should I be unavailable during my normal working hours, my supervisor Janice Mooneyham can be reached at (571) 272-6805.

The main FAX phone numbers for formal communications concerning this application are (571) 273-8300. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

/Tan Dean D. Nguyen/
Primary Examiner, Art Unit 3689